

ADOPTED NOVEMBER 7, 2006

PROPOSITION B.— (Proposed by Initiative Petition) Shall Missouri Statutes be amended to increase the state minimum wage rate to \$6.50 per hour, or to the level of the federal minimum wage if that is higher, and thereafter adjust the state minimum wage annually based on changes in the Consumer Price Index?

The proposed revisions to Missouri's wage rate laws generates an estimated \$3.3 million to \$4.3 million annually in state revenue. The impact on local government is unknown.

Be it enacted by the people of the State of Missouri:

Chapter 290 of the Revised Statutes of Missouri, 2005, is amended to read as follows:

§ 290.500. Definitions

As used in sections 290.500 to 290.530, the following words and phrases mean:

(1) "Agriculture", farming and all its branches including, but not limited to, the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural commodities, the raising of livestock, fish and other marine life, bees, fur-bearing animals or poultry and any practices performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market;

(2) "Director", the director of the department of labor and industrial relations or his authorized representative;

(3) "Employee", [an] **any** individual employed by an employer, except that the term "employee" shall not include:

(a) Any individual employed in a bona fide executive, administrative, or professional capacity;

(b) Any individual engaged in the activities of an educational, charitable, religious, or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to the organization are on a voluntary basis;

(c) Any individual standing in loco parentis to foster children in their care;

[(d) Any individual who receives a minimum wage pursuant to the Fair Labor Standards Act of 1938, as amended, including individuals employed by an employer covered by 29 U.S.C. 203, or other applicable federal law;]

[(e) **d**] Any individual employed for less than four months in any year in a resident or day camp for children or youth, or any individual employed by an educational conference center operated by an educational, charitable or not-for-profit organization;

[(f) **e**] Any individual engaged in the activities of an educational organization where employment by the organization is in lieu of the requirement that the individual pay the cost of tuition, housing or other educational fees of the organization or where earnings of the individual employed by the organization are credited toward the payment of the cost of tuition, housing or other educational fees of the organization;

[(g) **f**] Any individual employed on or about a private residence on an occasional basis for six hours or less on each occasion;

[(h) **g**] Any handicapped person employed in a sheltered workshop, certified by the department of elementary and secondary education;

[(i) **h**] Any person employed on a casual basis [in domestic service employment] to provide baby-sitting services[, any person employed in the domestic service of any family or person at his home, and any employee employed in domestic service employment to provide companionship services for individuals who because of age or infirmity are unable to care for themselves];

([j] **i**) Any individual employed by an employer subject to the provisions of [Part I of the Interstate Commerce Act] **part A of subtitle IV of title 49, United States Code, 49 U.S.C. §§ 10101 et seq.;**

([k] **j**) Any individual employed on a casual or intermittent basis as a golf caddy, newsboy, or in a similar occupation;

([l] **k**) Any individual whose earnings are derived in whole or in part from sales commissions and whose hours and places of employment are not substantially controlled by the employer;

([m] **l**) Any individual [subject to the minimum wage provisions of applicable federal law or any individual]who is employed in any government position defined in 29 U.S.C. §§ 203(e)(2)(c)(i)] **(C)(i)-(ii);**

([n] **m**) Any individual employed by a retail or service business whose annual gross volume sales made or business done is less than five hundred thousand dollars;

([o] **n**) Any individual who is an offender, as defined in section 217.010, RSMo, who is incarcerated in any correctional facility operated by the department of corrections, including offenders who provide labor or services on the grounds of such correctional facility pursuant to section 217.550, RSMo;

([p] **o**) Any individual described by the provisions of section 29 U.S.C. 213(a) (8);

(4) "Employer", any [individual, partnership, association, corporation, business, business trust, or any]person [or group of persons]acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Learner and apprentice", any individual **under 20 years of age** who has not completed the required training for a particular job. In no event shall the individual be deemed a learner or apprentice in the occupation after three months of training except where the director finds, after investigation, that for the particular occupation a minimum of proficiency cannot be acquired in three months. In no case shall a person be declared to be a learner or apprentice after six months of training for a particular employer or job. Employees of an amusement or recreation business that meets the criteria set out in 29 U.S.C. § 213(a) (3) may be deemed a learner or apprentice for ninety working days. No individual shall be deemed a learner or apprentice solely for the purpose of evading the provisions of sections 290.500 to 290.530;

(6) "Occupation", any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which individuals are gainfully employed;

(7) "Wage", compensation due to an employee by reason of his employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value[.];

(8) "Person", any individual, partnership, association, corporation, business, business trust, legal representative, or any organized group of persons;

(9) "Man-day", any day during which an employee performs any agricultural labor for not less than one hour.

§ 290.502. Minimum wage rate

1. Except as may be otherwise provided pursuant to sections 290.500 to 290.530, **effective January 1, 2007,** every employer shall pay to each [of his employees] **employee** wages at the **rate of \$ 6.50 per hour, or wages at the** same rate or rates set under the provisions of federal law as the prevailing federal minimum wage applicable to those covered jobs in interstate commerce, **whichever rate per hour is higher.**

2. **The minimum wage shall be increased or decreased on January 1, 2008, and on January 1 of successive years, by the increase or decrease in the cost of living. On September 30, 2007, and on each September 30 of each successive year, the director shall measure the increase or decrease in the cost of living by the percentage increase or decrease as of the preceding July over the level as of July of the immediately preceding year of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-**

W) or successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase or decrease rounded to the nearest five cents.

§ 290.505. Overtime compensation, applicable number of hours, exceptions

1. No employer shall employ any of his employees for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

2. Employees of an amusement or recreation business that meets the criteria set out in 29 U.S.C. § 213(a) (3) must be paid one and one-half times their regular compensation for any hours worked in excess of fifty-two hours in any one-week period.

3. With the exception of employees described in subsection (2), the overtime requirements of subsection (1) shall not apply to employees who are exempt from federal minimum wage or overtime requirements pursuant to 29 U.S.C. §§ 213(a)-(b).

§ 290.507. Agriculture, law not applicable to small farmers

Sections 290.500 to 290.530 shall not apply to any employee or employer engaged in agriculture, as defined in section 290.500 **(A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agriculture labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock.**

§ 290.510. Director may investigate to prove compliance

The director shall have authority to investigate and ascertain the wages of persons employed in any occupation included within the meaning of sections 290.500 to 290.530.

§ 290.512. Gratuities, goods or services as part of wages, effect on minimum wage requirements

1. No employer of any employee who receives and retains compensation in the form of gratuities in addition to wages is required to pay wages in excess of fifty percent of the minimum wage rate specified in sections 290.500 to 290.530, however, total compensation for such employee shall total at least the minimum wage specified in sections 290.500 to 290.530, the difference being made up by the employer.

2. If an employee receives and retains compensation in the form of goods or services as an incident of his employment and if he is not required to exercise any discretion in order to receive the goods or services, the employer is required to pay only the difference between the fair market value of the goods and services and the minimum wage otherwise required to be paid by sections 290.500 to 290.530. The fair market value of the goods and services shall be computed on a weekly basis. The director shall provide by regulation a method of valuing the goods and services received by any employee in lieu of the wages otherwise required to be paid under the

provisions of sections 290.500 to 290.530. He shall also provide by regulation a method of determining those types of goods and services that are an incident of employment the receipt of which does not require any discretion on the part of the employee.

§ 290.515. Physical or mental deficiency of employee, wage rate, determined by director, how

After a public hearing at which any person may be heard, the director shall provide by regulation for the employment in any occupation of individuals whose earning capacity is impaired by physical or mental deficiency at wages lower than the wage rate applicable under sections 290.500 to 290.530. The individuals shall be employed as the director finds appropriate to prevent curtailment of opportunities for employment, to avoid undue hardship, and to safeguard the wage rate applicable under sections 290.500 to 290.530, except that no individual who maintains a production level within the limits required of other employees shall be paid less than the wage rate applicable under sections 290.500 to 290.530. Employees affected or their guardians shall be given reasonable notice of this hearing.

§ 290.517. Learners and apprentices, wage rate, determined by director, how

After a public hearing of which individual employees affected must be given reasonable notice, the director shall provide by regulation for the employment in any occupation, at wages lower than the wage rate applicable under sections 290.500 to 290.530, of such learners and apprentices as he finds appropriate to prevent curtailment of opportunities for employment. Such wage rate for learners and apprentices shall be [the same rate or rates set under the provisions of federal law as the prevailing federal subminimum wage applicable to new workers] **not less than 90 cents less than the minimum wage established by sections 290.500 to 290.530.** At no time may this provision be used for the purpose of evading the spirit and meaning of sections 290.500 to 290.530.

§ 290.520. Employer to keep records—director may inspect, records to be confidential

Every employer subject to any provision of sections 290.500 to 290.530 or any regulation issued under sections 290.500 to 290.530 shall make and keep for a period of not less than three years on or about the premises wherein any employee is employed or at some other premises which is suitable to the employer, a record of the name, address and occupation of each of his employees, the rate of pay, the amount paid each pay period to each employee, the hours worked each day and each workweek by the employee and any goods or services provided by the employer to the employee as provided in section 290.512. The records shall be open for inspection by the director by appointment. Where the records required under this section are kept outside the state, the records shall be made available to the director upon demand. Every such employer shall furnish to the director on demand a sworn statement of time records and information upon forms prescribed or approved by the director. All the records and information obtained by the department of labor and industrial relations are confidential and shall be disclosed only on order of a court of competent jurisdiction.

§ 290.522. Summary of law and wage rate, employer to post, how

Every employer subject to any provision of sections 290.500 to 290.530 or of any regulations issued under sections 290.500 to 290.530 shall keep a summary of sections 290.500 to 290.530, approved by the director, and copies of any applicable wage regulations issued under sections 290.500 to 290.530, or a summary of the wage regulations posted in a conspicuous and accessible place in or about the premises wherein any person subject thereto is employed. Employers shall be furnished copies of the summaries and regulations by the state on request without charge.

§ 290.525. Violations--penalty

Any employer who hinders the director in the performance of his duties in the enforcement of sections 290.500 to 290.530 by any of the following acts is guilty of a class C misdemeanor:

- (1) Refusing to admit the director to any place of employment;
- (2) Failing to make, keep and preserve any records as required under the provisions of sections 290.500 to 290.530;
- (3) Falsifying any record required under the provisions of sections 290.500 to 290.530;
- (4) Refusing to make any record required under the provisions of sections 290.500 to 290.530 accessible to the director;
- (5) Refusing to furnish a sworn statement of any record required under the provisions of sections 290.500 to 290.530 or any other information required for the proper enforcement of sections 290.500 to 290.530 to the director upon demand;
- (6) Failing to post a summary of sections 290.500 to 290.530 or a copy of any applicable regulation as required;
- (7) Discharging or in any other manner discriminating against any employee who has notified the director that he has not been paid wages in accordance with the provisions of sections 290.500 to 290.530, or who has caused to be instituted any proceeding under or related to sections 290.500 to 290.530, or who has testified or is about to testify in any such proceeding;
- (8) Paying or agreeing to pay wages at a rate less than the rate applicable under sections 290.500 to 290.530. Payment at such rate for any week or portion of a week constitutes a separate offense as to each employee;
- (9) Otherwise violating any provisions of sections 290.500 to 290.530.

Each day of violation constitutes a separate offense.

§ 290.527. Action for underpayment of wages, employee may bring--limitation

Any employer who pays any employee less wages than the wages to which the employee is entitled under or by virtue of sections 290.500 to 290.530 shall be liable to the employee affected for the full amount of the wage rate and an additional equal amount as liquidated damages, less any amount actually paid to the employee by the employer and for costs and such reasonable attorney fees as may be allowed by the court or jury. The employee may bring any legal action necessary to collect the claim. Any agreement between the employee and the employer to work for less than the wage rate shall be no defense to the action. All actions for* the collection of any deficiency in wages shall be commenced within two years of the accrual of the cause of action.

§ 290.528. Law not to supersede more favorable existing law

Any standards relating to minimum wages, maximum hours, overtime compensation or other working conditions in effect under any other law of this state on August 28, 1990, which are more favorable to employees than those applicable to employees under sections 290.500 to 290.530 or the regulations issued under sections 290.500 to 290.530, shall not be deemed to be amended, rescinded, or otherwise affected by sections 290.500 to 290.530 but shall continue in full force and effect and may be enforced as provided by law.

§ 290.530. Law not to interfere with collective bargaining rights

Nothing in sections 290.500 to 290.530 shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of sections 290.500 to 290.530.

Adopted November 7, 2006. (For – 1,594,632; Against – 504,294)

Effective December 7, 2006

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